

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

August 12, 1992
AO-92-21

Ms. Julie Mandell
Fraser & Wise, P.C.
896 Beacon Street
Boston, MA 02215

Re: Independent Expenditures

Dear Ms. Mandell:

This letter is in response to your May 6, 1992, letter requesting an advisory opinion as to whether an individual and a political committee may jointly contribute towards an "independent expenditure."

By way of example you ask whether a political committee may contribute \$1,000, while an individual contributes an additional \$3,000, towards the purchase of a \$4,000 billboard advertisement. Paraphrasing M.G.L. c.55, s.18A, you state that the purpose of the billboard is to expressly advocate the election or defeat of a clearly identified candidate made without cooperation or consultation with any candidate, or any agent of a candidate, and which is not made in concert with, or at the request or suggestion of any candidate, or any non-elected political committee organized on behalf of a candidate or agent of such candidate.

In order to avoid confusion, certain preliminary matters need to be addressed. First, I assume for purposes of this advisory opinion that when you refer to a political committee you mean, in the language of M.G.L. c.55, s.6, a "political committee not organized on behalf of an individual candidate" (hereinafter "multi-candidate committee" or "PAC"). Obviously, if your question referred to or included a "political committee organized on behalf of a candidate," the individual's contribution would not, by definition, be an independent expenditure. M.G.L. c.55, s.18A.

Second, it is not entirely accurate to state that a Massachusetts PAC may make "independent expenditures in unlimited amounts." M.G.L. c.55, s.6 provides, in pertinent

part, that PACs may make expenditures "for the enhancement of the candidate[s] or the principle, for which the committee was organized so long as such expenditure is not primarily for . . . personal use" PAC expenditures are also subject to regulations promulgated by the Office which provide for certain limitations. See 970 CMR 2.00 et seq.

Turning now to your basic question, you correctly state that an individual may make independent expenditures in an unlimited quantity. See Buckley v. Valeo, 424 U.S. 1 (1976). It does not follow, however, that a multi-candidate committee and an individual's joint contribution constitutes an independent expenditure. Indeed, it is the opinion of this Office that M.G.L. c.55, s.18A, is not relevant to this factual situation.

Section 18A provides, in part:

[A]n expenditure by an individual, group, or association not defined as a political committee expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or a nonelected political committee organized on behalf of a candidate, or any agent of a candidate and which is not made in concert with, or at the request or suggestion of, any candidate, or any nonelected political committee organized on behalf of a candidate or agent of such candidate.

The above quoted section on independent expenditures applies only to those groups or organizations which are "not defined as a political committee expressly advocating the election or defeat of a clearly identified candidate" M.G.L. c.55, s.18A. As described in your question, the individual and the PAC may be pooling their resources to elect or defeat a clearly identified candidate. It would appear that the question being raised is whether a new political committee supporting an identified candidate would be created; the other possibility is that this scenario would result in an in-kind contribution to an existing PAC.

While additional facts are missing from your question, the proposed activity would, in this Office's opinion, violate the campaign finance law under various assumptions. This opinion will consider two alternatives.

I. Pooling Resources - In the first situation, I will assume that the individual and the PAC decide to pool their resources in order to purchase the billboard advertisement.

In pertinent part, M.G.L. c.55, s.1 defines a "political committee" as:

"any committee, association, organization or

other group of persons . . . which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates, or of presidential and vice presidential electors, or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters." (emphasis added).

By definition, the individual and the PAC would be acting as a new political committee since they would be an "organization" or a "group of persons" receiving contributions e.g., the PAC's contribution of \$1,000 and the individual's contribution of \$3,000. As a new political committee, the combined PAC and the individual would have to register and would also be subject to all the relevant contribution limitations and reporting requirements of campaign finance law. As a result, the individual's \$3,000 contribution would exceed the \$1,000 statutory limitation in violation of M.G.L. c.55, s.6.

II. In-kind Contribution - In this situation, I will assume that the individual was approached by the multi-candidate committee for help purchasing the billboard advertisement.

Here, the activity in question results in an illegal in-kind contribution to the PAC. In essence, the PAC has approached the individual stating its intention to purchase the billboard and offering to pay \$1,000 if the individual will pay \$3,000. This would be characterized as an in-kind contribution because the PAC is not directly receiving the monies, but is benefiting from the individual's acceptance of the \$3,000 obligation. In-kind contributions, like all other contributions, are subject to the statutory limitation. See AO-84-04 ("while in-kind contributions may be received by [a] political committee, they are subject to all limitations and prohibitions on individual contributions contained in M.G.L. c.55, including the \$1,000 limitation on individual contributions") Since the in-kind contribution exceeds the \$1,000 limitation on individual contributions to a political committee, it would be a violation of M.G.L. c.55, s.6.

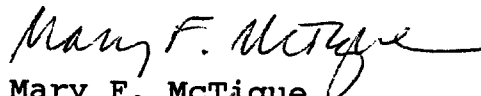
In conclusion, it is the opinion of this Office that an individual, and a political committee, not organized on behalf of a candidate, may not jointly undertake an "independent expenditure." Such an individual and political committee are either forming a new political committee, or engaging in an in-kind contribution subject to all the registration and/or contribution limitations of the campaign finance laws.

This opinion has been rendered solely on the basis of

representations made in your letter and assumptions set forth in the opinion, and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director